

1 REX DARRELL BERRY, State Bar No. 110219  
 2 ERICK C. TURNER, State Bar No. 236186  
 3 BERRY & BLOCK LLP  
 2150 River Plaza Drive, Suite 415  
 4 Sacramento, CA 95833  
 (916) 564-2000  
 (916) 564-2024 FAX

5 Attorneys for Defendant  
 6 WALGREEN CO.

7 UNITED STATES DISTRICT COURT  
 8  
 9 CENTRAL DISTRICT OF CALIFORNIA

10 ANNA MISSOURI, an individual

11 Plaintiff,

12 v.

13 WALGREEN CO., an Illinois corporation,  
 14 and DOES 1 through 35 inclusive,

15 Defendants.

11-5464DSF(VBKx)  
 DEFENDANT WALGREEN CO.'S  
 NOTICE TO FEDERAL COURT OF  
 REMOVAL OF CIVIL ACTION TO  
 FEDERAL COURT

BY FAX

16 TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE  
 17 CENTRAL DISTRICT OF CALIFORNIA AND TO PLAINTIFF ANNA MISSOURI AND  
 18 HER ATTORNEY OF RECORD:

19 I. JURISDICTION

20 1. This action has been removed and jurisdiction is proper pursuant to Sections 1332, 1441  
 21 and 1446 of Title 28 of the United States Code.

22 2. Defendant Walgreen Co. ("Walgreens") hereby gives Notice of Removal of the above-  
 23 captioned action from the Los Angeles County Superior Court, Case No. BC462224, to this  
 24 Court, and states:

25 On or about May 31, 2011, Walgreens was served by Plaintiff Anna Missouri  
 26 ("Plaintiff") with a copy of the Summons and Complaint in the underlying state court action,  
 27 filed May 25, 2011 and captioned: *ANNA MISSOURI, an individual v. WALGREEN CO., an*  
 28 *Illinois corporation; and DOES 1-35 inclusive*, (Los Angeles County Superior Court - Central

District, Case No. BC462224) (the “Complaint”). A copy of the Summons and Complaint are attached hereto as **Exhibit A**. A copy of Defendant Walgreen Co.’s Answer to Plaintiff’s Complaint is attached hereto as **Exhibit B**.

## **II. DIVERSITY EXISTS BETWEEN THE PARTIES**

1. Complete diversity exists between Plaintiff and Walgreens pursuant to 28 U.S.C. § 1332(a)(2), as follows:

a. At all times relevant herein, Plaintiff was, and is, a citizen of the State of California. (Complaint at ¶1.)

b. At all times relevant herein, Walgreens was, and is, incorporated under the laws of the State of Illinois and maintains its principal place of business in Deerfield, Illinois. (Declaration of John Mann (“Mann Decl.”), ¶ 2.) Walgreens’ corporate headquarters is located in Deerfield, Illinois, and is the nerve center from which the corporation’s high level officers direct, control, and coordinate the corporation’s activities. Corporate level decisions are made and the policies and procedures governing the operations of Walgreens retail stores and pharmacies are determined at the Deerfield, Illinois Corporate headquarters. (Mann Decl., ¶ 3.) As a result, Walgreens is a corporate citizen of Illinois. *See* 28 U.S.C. § 1332(c).

2. As the only parties to this lawsuit are Walgreens and Plaintiff, complete diversity exists.

## **III. INCLUSION OF DOE DEFENDANTS DOES NOT DEFEAT DIVERSITY**

1. “For purposes of removal the citizenship of defendants sued under fictitious names shall be disregarded.” 28 USC § 1441(a) (emphasis added). Thus, Plaintiff’s inclusion of “Doe” defendants in his Complaint has no effect on removability. In determining whether diversity of citizenship exists, only the named defendants are considered. *Newcombe v. Adolf Coors Co.*, 157 F3d 686, 690–691 (9th Cir. 1998).

## **IV. THE “MATTER IN CONTROVERSY” REQUIREMENTS OF 28 U.S.C. § 1332(a) ARE MET**

1. The “matter in controversy” requirements of 28 U.S.C. § 1332(a) are met in this matter because the damages claimed by Plaintiff exceed \$75,000.00. The “matter in controversy” may be determined based on the facts and claims alleged, “even though [the Complaint] did ‘not

1 specify the numerical value of the damage claim.”” *McPhail v. Decure & Co.*, 529 F.3d 947,  
 2 955-56 (10<sup>th</sup> Cir. 2008) (*quoting Lucelett v. Delta Airlines, Inc.*, 171 F.3d 295, 298 (5<sup>th</sup> Cir.  
 3 1999). Here, Plaintiff claims that, among other things, she has been the victim of retaliation,  
 4 discrimination based on disability, failure to accommodate, and violation of medical leave laws.  
 5 She now prays for damages including compensatory damages, exemplary and punitive damages,  
 6 treble damages, and attorneys’ fees. (**Exhibit A.**) Plaintiff’s Complaint alleges a variety of  
 7 egregious facts and numerous claims, which are in controversy in this case. Plaintiff claims that  
 8 she was subjected to discrimination based on her disability, that she was denied her right to take  
 9 a leave of absence under CFRA, and that she was retaliated for taking medical leave, and that  
 10 her employment was terminated in violation of public policy. Walgreens denies each of  
 11 Plaintiff’s allegations.

12 On these facts, Plaintiff alleges claims for:

- 13 a) Disability discrimination and perceived disability discrimination in violation of
- 14 FEHA;
- 15 b) Failure to engage in interactive process;
- 16 c) Failure to accommodate disability in violation of FEHA;
- 17 d) Interference with leave in violation of the CFRA;
- 18 e) Retaliation in violation of FEHA;
- 19 f) Failure to maintain an environment free of discrimination; and
- 20 g) Wrongful termination in violation of public policy.

21 3. Based on these alleged facts and claims, Plaintiff seeks the following recovery:

- 22 a) For a money judgment representing compensatory damages;
- 23 b) For punitive damages;
- 24 c) Attorneys’ fees;
- 25 d) Treble damages;
- 26 e) Costs of suit; and
- 27 f) Prejudgment interest.

4. Damage awards in discrimination cases alleging similar claims consist of actual damages, general damages, punitive damages, and attorneys' fees. Such recoveries routinely exceed the \$75,000.00 jurisdictional threshold. Plaintiff also seeks the recovery of compensatory damages to compensate her for alleged "emotional distress." To establish the probable scope of damages, a defendant may introduce evidence of jury verdicts in cases involving analogous facts. *See Faulkner v. Astro-Med, Inc.*, 1999 WL 820198, \*4 (N.D. Cal. 1999); *Miller*, 1997 WL 136242 at \*4. To this end, Walgreens highlights several cases with allegations similar to this one with substantial damage awards:

- a) *Wysanger v. Automobile Club of Southern California*, 57 Cal.App.4<sup>th</sup> 413 (2008) (affirming award of \$250,000.00 in compensatory damages and \$1,000,000.00 in punitive damages; failure to engage in interactive process and discrimination based on disability.)
- b) *Harvey v. Sybase, Inc.*, 161 Cal.App.4<sup>th</sup> 1547 (2008) (enforcing award of \$1,300,000.00 in compensatory damages and \$500,000.00 in punitive damages on claims of employment discrimination, harassment, and retaliation.)
- c) *McGee v. Tucoemas Federal Credit Union*, 153 Cal.App.4<sup>th</sup> 1351 (2007) (affirming award of \$750,000.00 in compensatory damages and \$1,200,000.00 in punitive damages on failure to accommodate disability claim.)
- d) *Arevalo v. Oregon Dept. of Motor Vehicles*, 208 F. Supp.2d 1160 (D. Or. 2002) (upholding \$250,000.00 compensatory damages award in lawsuit alleging discrimination.)
- e) *Zhang v. American Gem Seafoods, Inc.*, 339 F.3d 1020 (9th Cir. 2003) (upholding \$360,000.00 compensatory damages award in lawsuit alleging discrimination.)

5. A Court also may consider claims for punitive damages in determining the amount in controversy. *See Allen v. R&H Oil & Gas Co.*, 63 F.3d 1326, 1336 (5<sup>th</sup> Cir. 1995) (court applies "only common sense" to determine that claim for punitive damages likely will exceed "matter in controversy" requirements for diversity jurisdiction); *see also Aucina v. Amoco Oil Co.*, 871

1 F.Supp. 332, 334 (S.D. Iowa 1994) (punitive damages claim against Fortune 500 company  
 2 makes it “apparent plaintiff’s claims for punitive damages alone might exceed [the statutory  
 3 amount].”) Walgreens is one of the country’s largest pharmacy chains in the nation. While  
 4 Walgreens denies that Plaintiff is entitled to recover any damages, much less punitive damages,  
 5 given the size of Walgreens’ business operations, it is “apparent,” *id*, that Plaintiff is likely to  
 6 claim punitive damages in excess of \$75,000.00.

7 6. In addition, the court may consider Plaintiff’s claim for attorneys’ fees under FEHA  
 8 (Cal. Gov’t. Code § 12965(b)), because she is entitled to them by statute in the event she  
 9 prevails. *See Galt G/S v. JSS Scandinavia*, 142 F.3d 1150 (9th Cir. 1998) (“Where an  
 10 underlying statute authorizes an award of attorneys fees, either with mandatory or discretionary  
 11 language, such fees may be included in the amount in controversy.”); *Grant v. Chevron Phillips*  
 12 *Chem. Co.*, 309 F.3d 864 (5th Cir. 2002) cert denied 583 U.S. 945 (attorneys fees available  
 13 under state statute must be considered in amount in controversy whether award of fees is  
 14 mandatory or discretionary). Attorneys’ fees in employment cases routinely exceed \$75,000.00.  
 15 In this case, Plaintiff’s counsel sent to Walgreens a settlement demand on October 5, 2010, in  
 16 which Plaintiff’s counsel stated: “*Should we be successful at trial, I anticipate that our*  
 17 *attorneys’ fee petition alone will be several hundred thousand dollars.*” (Exhibit C; emphasis  
 18 in original.)

## 19 V. INTRADISTRICT ASSIGNMENT

20 1. This case is properly assigned to the United States District Court for the Central District  
 21 of California, as the alleged events that give rise to the Complaint occurred within that  
 22 jurisdictional district.

## 23 VI. CONCLUSION

24 1. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §1332, and the  
 25 state court action therefore is removable pursuant to 28 U.S.C. §1441, because this is a civil  
 26 action between citizens of different states and the matter in controversy exceeds the sum of  
 27 \$75,000.00, exclusive of interest and costs, as described above.

28 ///

1 2. Contemporaneously with the filing of this pleading with the Clerk of the United States  
2 District Court for the Central District of California, Defendant is filing a Notice to State Court of  
3 Removal of Civil Action to Federal Court, attached hereto as **Exhibit D**, with the Clerk of the  
4 Los Angeles County Superior Court.


5 3. Contemporaneously with the filing of this pleading with the Clerk of the United States  
6 District Court for the Central District of California, Defendant is serving a Notice to Adverse  
7 Party of Removal of Civil Action to Federal Court, attached hereto as **Exhibit E**.

8 4. By this Notice of Removal, Walgreens does not waive any defenses it may have  
9 including, but not limited to, lack of personal or subject matter jurisdiction, insufficiency of  
10 service, absence of service, and any defense that it may assert pursuant to Rule 12 of the Federal  
11 Rules of Civil Procedure, and hereby expressly reserves the right to assert any such defense in  
12 this action.

13  
14 DATED: June 28, 2011

BERRY & BLOCK LLP

15  
16 By

  
\_\_\_\_\_  
REX DARRELL BERRY  
ERICK C. TURNER  
Attorneys for Defendant  
WALGREEN CO.



*Missouri v. Walgreens, et al.*  
Los Angeles Superior Court, Case No. BC462224  
U.S.D.C., Central District, Case No. TBD

**DECLARATION OF SERVICE**

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in this action. I am an employee of Berry & Block LLP, and my business address is 2150 River Plaza Drive, Suite 415, Sacramento, CA 95833. On this day I caused to be served the following document(s):

**DEFENDANT WALGREEN CO.'S NOTICE TO FEDERAL COURT OF REMOVAL OF CIVIL ACTION TO FEDERAL COURT**

☒ by placing ☐ the original ☒ a true copy into sealed envelopes addressed and served as follows:

**Attorney for Plaintiff**

Douglas N. Silverstein  
Michael G. Jacob  
Jasmine A. Duel  
KESLUCK & SILVERSTEIN, P.C.  
9255 Sunset Boulevard, Suite 411  
Los Angeles, CA 90069-3309  
(310) 273-3180; Fax: (310) 273-6137

☒ **BY MAIL:** I am familiar with this firm's practice whereby the mail, after being placed in a designated area, is given fully prepaid postage and is then deposited with the U.S. Postal Service at Sacramento, California, after the close of the day's business.

☐ **BY PERSONAL DELIVERY:** I caused such envelope to be delivered by hand.

☐ **BY OVERNIGHT COURIER:** I caused such envelope to be placed for collection and delivery in accordance with standard overnight delivery procedures for delivery the next business day.

☐ **BY FACSIMILE:** I caused such documents(s) to be transmitted by facsimile transmission from (916) 564-2024 to the person(s) and facsimile transmission without number(s) shown about. The facsimile transmission was reported as complete without error and a transmission report was properly issued by the transmitting facsimile machine. A true and correct copy of the transmission report will be attached to this proof of service after facsimile service is completed.

☐ **BY FEDERAL ELECTRONIC FILING:** I caused such document(s) to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing and copies of the document(s) to the parties.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on *June 28, 2011*, at Sacramento, California.

  
Jenny O'Shaughnessy

Exhibit A



Douglas N. Silverstein, Esq. (SBN 181957)  
Michael G. Jacob, Esq. (SBN 229939)  
Jasmine A. Duel, Esq. (SBN 271872)  
KESLUK & SILVERSTEIN, P.C.  
9255 Sunset Boulevard, Suite 411  
Los Angeles, California 90069-3309  
Telephone: (310) 273-3180  
Facsimile: (310) 273-6137  
[dsilverstein@californialaborlawattorney.com](mailto:dsilverstein@californialaborlawattorney.com)  
[mjacob@californialaborlawattorney.com](mailto:mjacob@californialaborlawattorney.com)  
[jduel@californialaborlawattorney.com](mailto:jduel@californialaborlawattorney.com)

*21*  
*Donnan*  
*Brugnera*  
*90017*  
**FILED**  
LOS ANGELES SUPERIOR COURT

MAY 25 2011  
John A. Clarke, Executive Officer/Clerk  
By *[Signature]* Deputy  
RUBINA LOPEZ

Attorneys for Plaintiff ANNA MISSOURI

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES - CENTRAL DISTRICT

ANNA MISSOURI, an individual,  
Plaintiff,

v.

WALGREEN CO., an Illinois Corporation  
and DOES 1-35, inclusive,  
Defendants.

CASE NO. BC462224  
PLAINTIFF'S COMPLAINT FOR  
DAMAGES

1. Disability Discrimination and Perceived Disability Discrimination in Violation of FEHA;
2. Failure to Engage in the Interactive Process in Violation of FEHA;
3. Failure to Accommodate Disability in Violation of FEHA;
4. Interference With Leave in Violation of The California Family Rights Act;
5. Retaliation in Violation of FEHA;
6. Failure to Maintain an Environment Free From Discrimination; and
7. Wrongful Termination in Violation of Public Policy.

PUNITIVE DAMAGES

DEMAND FOR JURY TRIAL

CIT/CASE: BC462224 LEA/DEF#:  
RECEIPT #: CCH477728052  
DATE FILED: 05/25/11 03:03:23 PM  
PAYMENT: \$395.00  
RECEIVED: 0310  
CHECK: 395.00  
ASH: CHANGE:  
ARD:

1 Plaintiff ANNA MISSOURI, an individual, alleges as follows:

2 1. Plaintiff ANNA MISSOURI ("Plaintiff") is, and at all times relevant herein was,  
3 an individual residing in the County of San Bernardino, State of California.

4 2. Defendant WALGREEN CO. ("Walgreen" or "Defendant") is, and at all relevant  
5 times herein was, a corporation organized and existing under the laws of the State of Illinois, and  
6 is qualified to do business and is doing business in the County of Los Angeles, State of  
7 California.

8 3. Defendant WALGREEN is, and at all relevant times herein mentioned was, an  
9 employer as the term is defined in the California Fair Employment and Housing Act ("FEHA").

10 4. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as  
11 DOES 1 to 35, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff  
12 will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is  
13 informed and believes and thereon alleges that each of the fictitiously named Defendants is  
14 responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as  
15 herein alleged were proximately caused by such Defendants.

16 5. Plaintiff is informed and believes and thereon alleges, that each of the fictitiously  
17 named Defendants were the agents, servants and employees of each of the named Defendants  
18 and, in doing the acts and things herein alleged were, at all times, acting within the course and  
19 scope of that agency, servitude and employment, and with the permission, consent and approval  
20 or subsequent ratification of each of the named Defendants. All references to Defendants include  
21 the named Defendant and DOE Defendants herein. Plaintiff is informed and believes and thereon  
22 alleges, that at all material times, each of the Defendants was the agent and/or employee of each  
23 of the remaining Defendants, and each of them, and was, at all material times, acting within the  
24 purpose and scope of such agency and employment.

25 6. Plaintiff is informed and believes and thereon alleges that there exists such a unity  
26 of interest and ownership between Defendant, and DOES 1 - 35 that the individuality and  
27 separateness of those Defendants have ceased to exist. The business affairs of Defendant, and  
28 DOES 1 - 35 are, and at all times relevant hereto were, so mixed and intermingled that the same

1 cannot reasonably be segregated, and the same are in inextricable confusion. Defendants is, and  
 2 at all times relevant hereto was, used by DOES 1 - 35, and each of them as mere shells and  
 3 conduit for the conduct of certain of Defendants' affairs. The recognition of the separate  
 4 existence of Defendant, and DOES 1 - 35 would not promote justice, in that it would permit  
 5 Defendant to insulate themselves from liability to Plaintiff. Accordingly, Defendant, and DOES  
 6 1 - 35 constitute the alter egos of each other, and the fiction of their separate existence must be  
 7 disregarded at law and in equity, because such disregard is necessary to avoid fraud and injustice  
 8 to Plaintiff herein.

9 7. All conditions precedent (exhaustion of administrative remedies) to jurisdiction  
 10 has been complied with. Plaintiff timely filed charges against Defendant with the California  
 11 Department of Fair Employment and Housing ("DFEH") and has received a "Right to Sue" notice  
 12 as to each Defendant. These documents have been timely served on Defendants via certified mail  
 13 with return receipt requested.

#### 14 GENERAL ALLEGATIONS

15  
 16 8. Plaintiff became employed with Defendant on or about October 24, 2007, as a  
 17 sales clerk.

18 9. At all times, Plaintiff performed her job in a competent and satisfactory manner.

19 10. On or about August 12, 2009, there was a workplace fire in Defendant's store  
 20 while Plaintiff was on duty for her scheduled work shift.

21 11. Defendant did not permit Plaintiff to exit Defendant's store to get fresh air and  
 22 relief from the excessive smoke inside. WALGREEN' Store Manager, Debra Bruno, required  
 23 Plaintiff to remain in the store and continue to work and assist customers while the fire was being  
 24 put out.

25 12. About two or three hours after the fire, Laura Callius, Defendant's Assistant  
 26 Manager, arrived at Defendant's store and provided Plaintiff with a face mask. Defendant still  
 27 did not relieve Plaintiff from work, despite the excessive smoke inside.

28 ///

1           13.     Plaintiff suffered from nausea, dizziness and shortness of breath as a result of the  
2 workplace fire at Defendant's store.

3           14.     Plaintiff asked to see the doctor, but Debra Bruno told her there was nothing her  
4 employer could do for her.

5           15.     On or about September 11, 2009, Plaintiff visited a doctor. Plaintiff's doctor  
6 placed her on total temporary disability leave for seven days as a result of Plaintiff's headaches  
7 and injuries from the workplace fire.

8           16.     On or about September 18, 2009 Plaintiff's doctor released Plaintiff to work with  
9 accommodations, including but not limited to, limited standing or walking, sit down work, and a  
10 10 minute stretch break every 90 minutes. Defendant did not adhere to these limitations or  
11 engage in any good faith interactive process regarding Plaintiff's request for accommodation.

12           17.     On or about October 23, 2009, Plaintiff was diagnosed by her doctor for  
13 "adjustment disorder with mixed anxiety and depression."

14           18.     On or about November 6, 2009, Plaintiff visited the doctor who then requested  
15 Plaintiff return to work with accommodation – a change in store location. Defendant refused to  
16 honor the accommodation or engage in a good faith interactive process regarding the request.

17           19.     On or about November 13, 2009, Plaintiff put in a request for medical leave  
18 pertaining to her mental disability with her store manager Debra Bruno. Laura Callius printed out  
19 the personal leave papers for Plaintiff. Plaintiff subsequently filled out the personal leave papers  
20 and Laura Callius reviewed Plaintiff's personal leave papers with her.

21           20.     Plaintiff submitted the leave papers to Debra Bruno. Plaintiff indicated on the  
22 leave papers that her reasons for leave were due to "depression and anxiety" and to care for her  
23 son following his surgery. Debra Bruno was aware of Plaintiff's condition and request for  
24 disability leave. Ms. Bruno notified Plaintiff she would fax the request to her supervisor Omar.

25           21.     Laura later told Plaintiff that her request for leave was approved.

26           22.     From on or about November 21, 2009 until May 2010, Plaintiff took leave for her  
27 mental disability/serious health condition.

28     ///





1           31. Defendant, and each of them, were aware of Plaintiff's disability, and/or condition  
2 related to disability, as set forth above, because Plaintiff had informed Defendants of her  
3 disability/disability related condition and told Defendants of his limitations.

4           32. Defendant perceived and regarded Plaintiff as having a disability and/or condition  
5 related to disability.

6           33. At all times mentioned herein, Plaintiff was willing and able to perform the duties  
7 and functions of her position with a reasonable accommodation for Plaintiff's disability. At no  
8 time would the performance of the functions of the employment position, with a reasonable  
9 accommodation for Plaintiff's disability, have been a danger to Plaintiff's or any other person's  
10 health and/or safety, nor would it have created an undue hardship to the operation of Defendant's  
11 business.

12           34. On or April 1, 2009, Defendant terminated Plaintiff because of her disability  
13 and/or condition related to disability among other unlawful reasons.

14           35. By engaging in the above referenced acts and omissions, WALGREEN and  
15 DOES 1-35, and each of them, discriminated against Plaintiff because of her disability in  
16 violation of Government Code §§12940 et seq.

17           36. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained and  
18 continues to sustain economic damages in earnings and other employment benefits in an amount  
19 according to proof.

20           37. As a proximate result of Defendant's wrongful conduct, Plaintiff has sustained and  
21 continues to sustain non-economic damages and emotional distress, including but not limited to,  
22 loss of sleep, anxiety, tension, depression, and humiliation.

23           38. The acts and conduct of Defendant, and each of them, constituted "malice,"  
24 "oppression" and/or "fraud" (as those terms are defined in California Civil Code 3294(c)), in that  
25 it was intended by Defendant, and each of them, to cause injury to Plaintiff or was despicable  
26 conduct which was carried on by the Defendant, and each of them, with a willful and conscious  
27 disregard of the rights of Plaintiff.

28 ///

41. Plaintiff is entitled to attorneys' fees pursuant to Government Code §12965.

**FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN VIOLATION OF FEHA**  
**(Against WALGREEN and DOES 1-35, Inclusive)**

42. As a separate and distinct cause of action, Plaintiff complains and realleges all the allegations contained in this complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this



1 cause of action

2 43. Pursuant to California Government Code § 12940(n) WALGREEN and DOES 1-  
3 35 inclusive, were required to engage with Plaintiff in a good faith interactive process to  
4 determine the extent of his disability and/or condition related to disability and how it could be  
5 reasonably accommodated.

6 44. Plaintiff was at all times ready and willing to engage in the good faith interactive  
7 mandated by California Government Code § 12940(n). However WALGREEN and DOES 1-35  
8 inclusive, failed to engage in said good faith interactive process with Plaintiff.

9 45. On or about, April 1, 2009, WALGREEN terminated Plaintiff's employment as a  
10 direct result of WALGREEN'S (and DOES 1-35 inclusive), failure to engage in any good faith  
11 interactive process, among other unlawful reasons.

12 46. By engaging in the above referenced acts and omissions, Defendant, and each of  
13 them, and DOES 1-35 inclusive, discriminated against Plaintiff because of her disability in  
14 violation of Government Code §§12940 et seq.

15 47. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained and  
16 continues to sustain economic damages in earnings and other employment benefits in an amount  
17 according to proof.

18 48. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained and  
19 continues to sustain non-economic damages and emotional distress, including but not limited to,  
20 loss of sleep, anxiety, tension, depression, and humiliation.

21 49. The acts and conduct of defendants, and each of them, constituted "malice,"  
22 "oppression" and/or "fraud" (as those terms are defined in California Civil Code 3294(c)), in that  
23 it was intended by Defendants, and each of them, to cause injury to Plaintiff or was despicable  
24 conduct which was carried on by the Defendant, and each of them, with a willful and conscious  
25 disregard of the rights of Plaintiff.

26 50. The acts of Defendant, and each of them, were done fraudulently, maliciously and  
27 oppressively and with the advance knowledge, conscious disregard, authorization, ratification or  
28 act of oppression, within the meaning of Civil Code §3294 on the part of Defendant's officers,

1 directors, or managing agents of the corporation. The actions and conduct of Defendant, and each  
 2 of them, were intended to cause injury to Plaintiff and constituted deceit and concealment of  
 3 material facts known to Defendant, and each of them, with the intention of the Defendant's part to  
 4 deprive Plaintiff of property and legal rights, justifying an award of exemplary and punitive  
 5 damages in an amount according to proof.

6 51. Plaintiff is entitled to attorneys' fees pursuant to Government Code §12965.

### 7 8 THIRD CAUSE OF ACTION

#### 9 **FAILURE TO ACCOMMODATE DISABILITY IN VIOLATION OF FEHA**

10 **(Against WALGREEN and DOES 1-35, Inclusive)**

11 52. As a separate and distinct cause of action, Plaintiff complains and realleges all the  
 12 allegations contained in this complaint, and incorporates them by reference into this cause of  
 13 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
 14 cause of action.

15 53. Pursuant to California Government Code § 12940(m) and 12945(c), WALGREEN  
 16 and DOES 1-35 inclusive, were required to reasonably accommodate Plaintiff's  
 17 disability/disability related condition. Instead of reasonably accommodating Plaintiff, Defendants  
 18 terminated Plaintiff for no legitimate reason.

19 54. On or about April 1, 2010, WALGREEN terminated Plaintiff's employment as a  
 20 direct result of WALGREEN'S (and DOES 1-35 inclusive) failure to accommodate Plaintiff's  
 21 known disability and/or condition related to disability, among other unlawful reasons.

22 55. By engaging in the above referenced acts and omissions, WALGREEN and  
 23 DOES 1-35, and each of them, discriminated against Plaintiff because of her disability in  
 24 violation of Government Code §§12940 et sec.

25 56. As a proximate result of Defendant's wrongful conduct, Plaintiff has sustained and  
 26 continues to sustain economic damages in earnings and other employment benefits in an amount  
 27 Court according to proof.

28 ///



63. At all times herein mentioned, Defendants were "Employer[s]" within the definition of Government Code Section 12945.2, in that Defendant regularly employed 50 or more people.

64. Defendant and each of them, and DOES 1-35 inclusive embarked on a campaign of discrimination against Plaintiff because of her disability by the following continuous actions, and conduct, among others:

(a) Plaintiff was entitled to leave pursuant to the Family Rights and Family Medical Leave Act

(b) On or about April 1, 2010, Defendant, and each of them, and DOES 1-35 inclusive, terminated and retaliated against Plaintiff because of Plaintiff's entitlement and/or request and/or taking of the right to medical leave in violation of Government Code Section 12945.2 et seq.;

(c) Defendant, and each of them, and DOES 1-35 inclusive, failed to give Plaintiff an opportunity at any time to return to work in violation of Government Code Section 12945.2 et seq.;

(d) Defendant and each of them, and DOES 1-35 inclusive, refused to allow Plaintiff to retain Plaintiff's employee status and refused to return Plaintiff to work in violation of Government Code Section 12945.2 et seq.

65. As a proximate result of Defendant's wrongful conduct, Plaintiff has sustained and continues to sustain economic damages in earnings and other employment benefits in an amount according to proof.

66. As a proximate result of Defendant's wrongful conduct, Plaintiff has sustained and continues to sustain non-economic damages and emotional distress, including but not limited to, loss of sleep, anxiety, tension, depression, and humiliation.

67. The acts and conduct of Defendants, and each of them, constituted "malice," "oppression" and/or "fraud" (as those terms are defined in California Civil Code 3294(c)), in that it was intended by Defendants, and each of them, to cause injury to Plaintiff or was despicable conduct which was carried on by the Defendant, and each of them, with a willful and conscious

1 disregard of the rights of Plaintiff.

2 68. The acts of Defendant, and each of them, were done fraudulently, maliciously and  
3 oppressively and with the advance knowledge, conscious disregard, authorization, ratification or  
4 act of oppression, within the meaning of Civil Code §3294 on the part of Defendant's officers,  
5 directors, or managing agents of the corporation. The actions and conduct of Defendant, and each  
6 of them, were intended to cause injury to Plaintiff and constituted deceit and concealment of  
7 material facts known to Defendant, and each of them, with the intention of the Defendant's part to  
8 deprive Plaintiff of property and legal rights, justifying an award of exemplary and punitive  
9 damages in an amount according to proof.

10 69. Plaintiff is entitled to attorneys' fees pursuant to Government Code §12965.

# 11 12 **FIFTH CAUSE OF ACTION**

## 13 **RETALIATION IN VIOLATION OF FEHA**

14 **(Against WALGREEN and DOES 1-35, Inclusive)**

15 70. As a separate and distinct cause of action, Plaintiff complains and realleges all the  
16 allegations contained in this complaint, and incorporates them by reference into this cause of  
17 action as though fully set forth herein, excepting those allegations which are inconsistent with this  
18 cause of action.

19 71. At all times mentioned in this Complaint, the California Fair Employment and  
20 Housing Act ("FEHA"), Government Code §§ 12940 *et seq.*, was in full force and effect and was  
21 binding on Defendant, and each of them. These sections required Defendant, and each of them,  
22 to refrain from retaliating against Plaintiff because she participated in a protected activity.

23 72. Plaintiff participated in the protected activities of requesting reasonable  
24 accommodation for her disability and disability related condition and requesting leave because of  
25 her disability, disability related condition and serious health condition, and taking protected leave.

26 73. On or about April 1, 2009, Defendant, and each of them, and DOES 1-35  
27 inclusive, terminated Plaintiff because she requested reasonable accommodation and leave for her  
28 disability/disability/serious health condition.

1           74. By engaging in the above referenced acts and omissions, Defendant, and each of  
2 them, retaliated against Plaintiff because she participated in protected activities in violation of  
3 Government Code §§12940 et sec.

4           75. As a proximate result of Defendants' wrongful conduct, Plaintiff has sustained and  
5 continues to sustain economic damages in earnings and other employment benefits in an amount  
6 according to proof.

7           76. As a proximate result of Defendant's wrongful conduct, Plaintiff has sustained and  
8 continues to sustain noneconomic damages and emotional distress, including but not limited to,  
9 loss of sleep, anxiety, tension, depression, and humiliation.

10           77. The acts and conduct of defendants, and each of them, constituted "malice,"  
11 "oppression" and/or "fraud" (as those terms are defined in California Civil Code 3294(c)), in that  
12 it was intended by Defendant, and each of them, to cause injury to Plaintiff or was despicable  
13 conduct which was carried on by the Defendant, and each of them, with a willful and conscious  
14 disregard of the rights of Plaintiff.

15           78. The acts of Defendant, and each of them, were done fraudulently, maliciously and  
16 oppressively and with the advance knowledge, conscious disregard, authorization, ratification or  
17 act of oppression, within the meaning of Civil Code §3294 on the part of Defendant's officers,  
18 directors, or managing agents of the corporation. The actions and conduct of Defendant, and each  
19 of them, were intended to cause injury to Plaintiff and constituted deceit and concealment of  
20 material facts known to Defendant, and each of them, with the intention of the Defendant's part to  
21 deprive Plaintiff of property and legal rights, justifying an award of exemplary and punitive  
22 damages in an amount according to proof.

23           79. Plaintiff is entitled to attorneys' fees pursuant to Government Code §12965.

24 ///

25 ///

26 ///

27 ///

28 ///



**SIXTH CAUSE OF ACTION****FAILURE TO MAINTAIN AN ENVIRONMENT FREE FROM DISCRIMINATION AND  
RETALIATION IN VIOLATION OF FEHA****(Against WALGREEN and DOES 1-35, Inclusive)**

80. As a separate and distinct cause of action, Plaintiff complains and realleges all the allegations contained in this complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

81. At all times mentioned in this Complaint, the California Fair Employment and Housing Act ("FEHA"), Government Code §§ 12940 *et seq.*, was in full force and effect and was binding on Defendant, and each of them. These sections required Defendant, and each of them, to take all reasonable steps to maintain a workplace environment free from unlawful discrimination, harassment and retaliation.

82. Defendants and each of them, and DOES 1-35 inclusive embarked on a campaign of discrimination and retaliation against Plaintiff because of his disability, disability and because he requested reasonable accommodation and leave and took protected leave by the following continuous actions, and conduct, among others:

- a) On or about August 2009, Plaintiff informed Defendant that she was suffering complications from her disability and that he needed to see a physician.
- b) On or about November 2009, after seeing her physician, Plaintiff informed Defendant that her physician had advised Plaintiff that she relocate stores. Plaintiff presented to Defendant, her physician's note indicating accommodations. Defendant refused.
- c) Plaintiff also informed Defendant of her need for disability leave, and Defendant failed to meaningfully engage in a good faith interactive process with her.

83. On or about November 2009 until May 2010, Plaintiff took protected leave.

84. On or about May 2010, Plaintiff requested that she be allowed to return to work.



1 However, Defendant refused to allow Plaintiff to return to work. Defendant indicated Plaintiff  
2 was terminated April 1, 2010.

3 85. By engaging in the above referenced acts and omissions, Defendant, and each of  
4 them, failed to take all reasonable steps maintain a workplace environment free from unlawful  
5 discrimination, harassment and retaliation in violation of Government Code §§12940 et sec.

6 86. As a proximate result of Defendant's wrongful conduct, Plaintiff has sustained and  
7 continues to sustain economic damages in earnings and other employment benefits in an amount  
8 according to proof.

9 87. As a proximate result of Defendant's wrongful conduct, Plaintiff has sustained and  
10 continues to sustain noneconomic damages and emotional distress, including but not limited to,  
11 loss of sleep, anxiety, tension, depression, and humiliation.

12 88. The acts and conduct of defendants, and each of them, constituted "malice,"  
13 "oppression" and/or "fraud" (as those terms are defined in California Civil Code 3294(c)), in that  
14 it was intended by Defendant, and each of them, to cause injury to Plaintiff or was despicable  
15 conduct which was carried on by the Defendant, and each of them, with a willful and conscious  
16 disregard of the rights of Plaintiff.

17 89. The acts of Defendant, and each of them, were done fraudulently, maliciously and  
18 oppressively and with the advance knowledge, conscious disregard, authorization, ratification or  
19 act of oppression, within the meaning of Civil Code §3294 on the part of Defendant's officers,  
20 directors, or managing agents of the corporation. The actions and conduct of Defendant, and each  
21 of them, were intended to cause injury to Plaintiff and constituted deceit and concealment of  
22 material facts known to Defendant, and each of them, with the intention of the Defendant's part to  
23 deprive Plaintiff of property and legal rights, justifying an award of exemplary and punitive  
24 damages in an amount according to proof.

25 90. Plaintiff is entitled to attorneys' fees pursuant to Government Code §12965.

26 ///

27 ///

28 ///

**SEVENTH CAUSE OF ACTION****WRONGFUL TERMINATIONIN VIOLATION OF PUBLIC POLICY****(Against WALGREEN and DOES 1-35, Inclusive)**

91. As a separate and distinct cause of action, Plaintiff complains and realleges all the allegations contained in this complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

92. At all times herein mentioned, the public policy of the State of California, as codified, expressed and mandated in California Government Code §12940 was to prohibit employers from harassing, discriminating and retaliating against any individual based on perceived and/or physical disability, based upon exercise of rights under that section. This public policy of the State of California is designed to protect all employees and to promote the welfare and well-being of the community at large. Accordingly, the actions of Defendant, and each of them, in discriminating, retaliating and terminating Plaintiff on the grounds of stated above, or for complaining about such discrimination and retaliation, was wrongful and in contravention and violation of the express public policy of the State of California, to wit, the policy set forth in California Government Code §12940 et seq., and the laws and regulations promulgated thereunder.

93. At all times herein mentioned, the public policy of the State of California, as codified, expressed and mandated in California Government Code §§12945 and 12945.2 was to prohibit employers from discriminating and retaliating against any individual based on disability and/or their taking, requesting or needing Family Medical/maternity Leave. This public policy of the State of California is designed to protect all employees and to promote the welfare and well-being of the community at large. Accordingly, the actions of Defendant, and each of them, in discriminating, retaliating and terminating Plaintiff on the grounds of stated above, or for complaining about such discrimination and retaliation, was wrongful and in contravention and violation of the express public policy of the State of California, to wit, the policy set forth in California Government Code §§ 12945 and 12945.2 et seq., and the laws and regulations

1 promulgated thereunder.

2 94. Defendant's discharge of Plaintiff on or about April 1, 2010 violated the  
3 aforementioned fundamental principles of public policy in that there is a substantial and  
4 fundamental policy against disability, disability and gender discrimination in employment as  
5 delineated in the FEHA.

6 95. As a proximate result of Defendant's wrongful conduct, Plaintiff has sustained and  
7 continues to sustain economic damages in earnings and other employment benefits in an amount  
8 according to proof.

9 96. As a proximate result of Defendant's wrongful conduct, Plaintiff has sustained and  
10 continues to sustain noneconomic damages and emotional distress, including but not limited to,  
11 loss of sleep, anxiety, tension, depression, and humiliation.

12 97. The acts and conduct of defendant, and each of them, constituted "malice,"  
13 "oppression" and/or "fraud" (as those terms are defined in California Civil Code 3294(c)), in that  
14 it was intended by Defendants, and each of them, to cause injury to Plaintiff or was despicable  
15 conduct which was carried on by the Defendants, and each of them, with a willful and conscious  
16 disregard of the rights of Plaintiff.

17 98. The acts of Defendant, and each of them, were done fraudulently, maliciously and  
18 oppressively and with the advance knowledge, conscious disregard, authorization, ratification or  
19 act of oppression, within the meaning of Civil Code §3294 on the part of Defendant's officers,  
20 directors, or managing agents of the corporation. The actions and conduct of Defendant, and each  
21 of them, were intended to cause injury to Plaintiff and constituted deceit and concealment of  
22 material facts known to Defendant, and each of them, with the intention of the Defendant's part to  
23 deprive Plaintiff of property and legal rights, justifying an award of exemplary and punitive  
24 damages in an amount according to proof.

25 99. Plaintiff is entitled to attorneys' fees pursuant to California Code of Civil  
26 Procedure §1021.5.

27 ///

28 ///

**PRAYER FOR RELIEF**

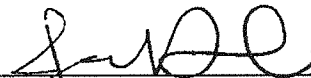
WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, and DOES 1 through 35, jointly and severally, as follows:

1. For economic damages according to proof;
2. For non-economic damages according to proof;
3. For prejudgment interest;
4. For an award of exemplary and punitive damages according to proof;
5. For reasonable attorneys' fees pursuant to Government Code §12965(b), the
6. Treble damages pursuant to Civil Code § 3345;
7. For costs of suit herein incurred; and
8. For such other relief as the court deems proper.

DATED: MAY 24, 2011

KESLUK & SILVERSTEIN, P.C.

By

  
Douglas N. Silverstein, Esq.  
Michael G. Jacob, Esq.  
Jasmine A. Duel, Esq.  
Attorneys for Plaintiff ANNA MISSOURI

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

DATED: MAY 24, 2011

KESLUK & SILVERSTEIN, P.C.

By


  
Douglas N. Silverstein, Esq.  
Michael G. Jacob, Esq.  
Jasmine A. Duel, Esq.  
Attorneys for Plaintiff ANNA MISSOURI

Exhibit B

JUN 20 2011

John A. Clarke, Executive Officer/Clerk  
By Dorothy Swain, Deputy  
DOROTHY SWAIN

## COUNTY OF LOS ANGELES - CENTRAL DISTRICT

) Case No. BC462224 Dept-71

**DEFENDANT WALGREEN CO.'S  
ANSWER TO COMPLAINT**

Complaint filed: 05/25/11

Complaint filed: 05/25/11

BY FAX

Defendant Walgreen Co., ("Walgreens") hereby answers the unverified Complaint ("Complaint") filed by Plaintiff Anna Missouri ("Plaintiff") as follows:

Pursuant to California Code of Civil Procedure section 431.30, Walgreens denies, generally and specifically, each and every purported allegation and cause of action in the Complaint, and denies that Plaintiff sustained injuries or damages in any sum, or at all.

## FIRST AFFIRMATIVE DEFENSE

As a first affirmative defense, Walgreens pleads that Plaintiff's Complaint, and each and every claim purportedly set forth therein, fails to state facts sufficient to constitute a claim or claims upon which relief can be granted.

1

1                                   **SECOND AFFIRMATIVE DEFENSE**

2           As a second affirmative defense, Walgreens pleads that Plaintiff was an at-will  
3 employee, and each personnel action by Walgreens of which Plaintiff complains, if they  
4 occurred, were taken for a legitimate reason not prohibited by law or in breach of the terms of  
5 any agreement between the parties.

6                                   **THIRD AFFIRMATIVE DEFENSE**

7           As a third affirmative defense, Walgreens pleads that irrespective of any alleged  
8 improper motive, which Walgreens denies, Walgreens's decisions regarding Plaintiff's  
9 employment would have been the same.

10                                  **FOURTH AFFIRMATIVE DEFENSE**

11           As a fourth affirmative defense, Walgreens pleads that the Complaint, and each  
12 purported claim contained therein, is barred by the fact that the alleged conduct by Walgreens  
13 was justified under the given circumstances.

14                                  **FIFTH AFFIRMATIVE DEFENSE**

15           As a fifth affirmative defense, Walgreens plead that Plaintiff has failed to mitigate her  
16 damages, if any, by not exercising reasonable efforts and due diligence to obtain suitable  
17 alternative employment.

18                                  **SIXTH AFFIRMATIVE DEFENSE**

19           As a sixth affirmative defense, Walgreens pleads that the Complaint, and each purported  
20 claim contained therein, is barred by the doctrine of unclean hands.

21                                  **SEVENTH AFFIRMATIVE DEFENSE**

22           As a seventh affirmative defense, Walgreens pleads that the Complaint, and each  
23 purported claim contained therein, is barred and/or damages are limited or precluded by the  
24 doctrine of after-acquired-evidence.

25                                  **EIGHTH AFFIRMATIVE DEFENSE**

26           As an eighth affirmative defense, Walgreens pleads that the Complaint, and each  
27 purported claim contained therein, is barred by the doctrines of estoppel and/or waiver.

28   ///



**NINTH AFFIRMATIVE DEFENSE**

As a ninth affirmative defense, Walgreens pleads that Plaintiff's damages, if any, were brought about by Plaintiff's own conduct, not the conduct of any Walgreens or any agent of Walgreens.

**TENTH AFFIRMATIVE DEFENSE**

As a tenth affirmative defense, Walgreens pleads that Plaintiff's damages, if any, must be set off against any other source of compensation available to Plaintiff, including but not limited to wages and benefits that were or could have been earned at other employment.

**ELEVENTH AFFIRMATIVE DEFENSE**

As an eleventh affirmative defense, Walgreens pleads that Plaintiff may not recover punitive or exemplary damages against Walgreens as no officer, director, or corporate managing agent committed, ratified or condoned malicious or oppressive conduct.

**TWELFTH AFFIRMATIVE DEFENSE**

As a twelfth affirmative defense, Walgreens pleads that the Complaint, and each purported claim contained therein, is barred by the doctrine of consent.

**THIRTEENTH AFFIRMATIVE DEFENSE**

As a thirteenth affirmative defense, Walgreens pleads that the Complaint, and each purported claim contained therein, fails to state facts sufficient to support allegations of oppression, fraud, and/or malice.

**FOURTEENTH AFFIRMATIVE DEFENSE**

As a fourteenth affirmative defense, Walgreens pleads that Plaintiff failed to exhaust all the administrative remedies that were prerequisites to filing this action, and therefore this action is barred.

**FIFTEENTH AFFIRMATIVE DEFENSE**

As a fifteenth affirmative defense, Walgreens pleads that Walgreens is not liable for Plaintiff's claimed emotional or physical injuries to the extent they arise out of pre-existing physical or mental conditions and/or other non-employment injuries or life stressors.

///

**SIXTEENTH AFFIRMATIVE DEFENSE**

As a sixteenth affirmative defense, Walgreens pleads that the claims alleged in the Complaint are barred by the doctrine of Workers' Compensation exclusivity.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

As a seventeenth affirmative defense, Walgreens pleads that each of Plaintiff's Causes of Action are barred by the applicable statute of limitations.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

As an eighteenth affirmative defense, Walgreens pleads that each of Plaintiff's Causes of Action are barred by the doctrine of laches.

WHEREFORE, reserving the right to allege any further affirmative defenses that become apparent during discovery and having fully answered the Complaint, Walgreens prays that Plaintiff's claims be dismissed with prejudice and that Plaintiff take nothing thereby; that Walgreens be awarded judgment in its favor and its attorneys' fees and costs incurred in defense of this action; and such other relief in Walgreens' favor as the Court deems just and proper.

DATED: June 20, 2011

BERRY & BLOCK LLP

By

REX DARRELL BERRY  
ERICK C. TURNER  
Attorneys for Defendant  
WALGREEN CO.

1 *Missouri v. Walgreens, et al.*  
 2 Los Angeles Superior Court, Case No. BC462224

3 **DECLARATION OF SERVICE**

4 I am a citizen of the United States, over the age of 18 years, and not a party to or  
 5 interested in this action. I am an employee of Berry & Block LLP, and my business address is  
 2150 River Plaza Drive, Suite 415, Sacramento, CA 95833. On this day I caused to be served the  
 following document(s):

6 **DEFENDANT WALGREEN CO.'S ANSWER TO COMPLAINT**

7 ☒ by placing ☐ the original ☒ a true copy into sealed envelopes addressed and served as  
 8 follows:

9 **Attorney for Plaintiff**

10 Douglas N. Silverstein  
 Michael G. Jacob  
 Jasmine A. Duel  
 KESLUCK & SILVERSTEIN, P.C.  
 9255 Sunset Boulevard, Suite 411  
 Los Angeles, CA 90069-3309  
 (310) 273-3180; Fax: (310) 273-6137

13 ☒ **BY MAIL:** I am familiar with this firm's practice whereby the mail, after being placed in  
 14 a designated area, is given fully prepaid postage and is then deposited with the U.S. Postal  
 Service at Sacramento, California, after the close of the day's business.

15 ☐ **BY PERSONAL DELIVERY:** I caused such envelope to be delivered by hand.

16 ☐ **BY OVERNIGHT COURIER:** I caused such envelope to be placed for collection and  
 17 delivery in accordance with standard overnight delivery procedures for delivery the next  
 business day.

18 ☐ **BY FACSIMILE:** I caused such documents(s) to be transmitted by facsimile  
 19 transmission from (916) 564-2024 to the person(s) and facsimile transmission without  
 20 number(s) shown about. The facsimile transmission was reported as complete without  
 error and a transmission report was properly issued by the transmitting facsimile machine.  
 A true and correct copy of the transmission report will be attached to this proof of service  
 after facsimile service is completed.

21 ☐ **BY FEDERAL ELECTRONIC FILING:** I caused such document(s) to be  
 22 electronically filed with the Clerk of the Court using the CM/ECF system, which will send  
 23 notification of such filing and copies of the document(s) to the parties.

24 I declare under penalty of perjury under the laws of the State of California that the  
 foregoing is true and correct.

25 Executed on *June 20, 2011*, at Sacramento, California.

26  
 27   
 28 Jenny O'Shaughnessy

**PROOF OF SERVICE**

Exhibit C

BRIAN S. KESLUK  
DOUGLAS N. SILVERSTEIN  
MICHAEL G. JACOB  
DAVID A. COHN  
LAUREN J. MORRISON  
CATHERINE J. ROLAND



9255 SUNSET BLVD., SUITE 411  
LOS ANGELES, CA 90069  
TELEPHONE (310) 273-3180  
FACSIMILE (310) 273-0137  
www.californialaborlawattorney.com

Brian S. Kesluk, Esq.  
bkesluk@californialaborlawattorney.com

October 5, 2010

*via Certified Mail and First Class Mail*

*Evidence Code § 1152*

Debra Bruno, Manager  
Walgreen's  
1280 West Foothill Boulevard  
Rialto, California 92376

**Re: Wrongful Termination of Anna Missouri**

Dear Ms. Bruno:

Our firm has been retained by Anna Missouri regarding her claim for wrongful termination, retaliation and disability discrimination against Walgreen's (hereinafter "the Company"). As a result of our preliminary investigation, it is our position that Ms. Missouri has been a victim of the Company's breach of its statutory obligations resulting in a wrongful termination in violation of statute and public policy. The associated claims are failing to prevent discrimination, failing to engage in the interactive process, retaliation in violation of Labor Code Section 132A, and intentional and negligent infliction of emotional distress.

Enclosed herewith are Ms. Missouri's DFEH Complaint and Right-To-Sue Notice, thus clearing the way for the filing of a civil action in the event litigation becomes inevitable.

Facts of Ms. Missouri's Case

Ms. Missouri worked as a sales clerk with the Company from October 24, 2007 until her wrongful termination on April 1, 2010. On August 12, 2009, she was injured as a result of a workplace fire at the store. Though she wanted to leave, her manager had her remain at work while they put out the fire.

Ms. Missouri asked to see the doctor, but her manager told her there was nothing the employer could do for her. Ms. Missouri persisted and received treatment for "adjustment disorder with anxiety and depression." On November 6, 2009, Ms. Missouri's doctor released her to return to work with an accommodation - a change in store location. The Company refused.

**KESLUK & SILVERSTEIN**

Walgreen's  
October 5, 2010  
Page 2 of 3

Ms. Missouri was released to work without restriction on June 11, 2010. The Company refused to allow her to return to work, stating that she had exhausted her available leave and was terminated April 1, 2010.

Disability Discrimination

The California Fair Employment and Housing Act (FEHA) prohibits California employers from discriminating against employees on the basis of perceived physical or mental disability. *Government Code* § 12926 *et seq.* Ms. Missouri was disabled as a result of a workplace injury. The Company refused to accommodate her need for a change in store location and refused to extend her leave.

Multiple Violations by The Company

Here, the Company violated California law by discriminating against Ms. Missouri because of her disability and her need to utilize protected CFRA/FMLA leave. The Company also retaliated against Ms. Missouri for making a workplace injury claim in violation of *Labor Code* § 132a. Furthermore, the Company failed to accommodate a reasonable request for an accommodation and failed to engage in the interactive process to find reasonable solutions to get Ms. Missouri back to work.

Damages

Ms. Missouri's potential damages for the above-described causes of action are substantial. As for her economic damages, she would be entitled to lost earnings from the date of her wrongful termination. She would also be entitled to all of the Company's benefits that she was prevented from enjoying after her termination. In addition, Ms. Missouri will undoubtedly recover sizeable emotional distress damages. The loss of her job in this economy devastated her. Jurors will understand that.

*We also believe that Ms. Missouri's story and the Company's blatant disregard of its legal obligations will inflame a jury and possibly cause it to award punitive damages for this malicious and oppressive behavior.*

Attorneys' Fees

Moreover, virtually all of Ms. Missouri's claims include statutory attorneys' fees. See *Government Code* § 12965(b). Naturally, the availability of attorneys' fees here greatly increases the risk to the Company and virtually ensures a sizeable recovery for our client.

KESLUK & SILVERSTEIN

Walgreen's  
October 5, 2010  
Page 3 of 3

Conclusion

Our firm remains prepared to litigate this case through trial, but we realize that it might be in the best interests of the Company to explore the possibility of early settlement. *Should we be successful at trial, I anticipate that our attorneys' fee petition alone will be several hundred thousand dollars.*

Accordingly, we propose that the parties participate in mediation with a neutral mediator that attorneys from both sides respect. Such a mediator would be able to listen to both sides of the story and render objective feedback on the relative merits of the case.

If we do not hear from you or your attorneys within thirty (30) days, we will assume that you are not interested in settling this matter and we will proceed to file the appropriate complaint on behalf of our client. *Irrespective of the foregoing, let this serve as a request pursuant to Labor Code § 432, that the Company immediately forward to my attention, Ms. Missouri's entire personnel file, including, but not limited to, her employment records, personnel records and all documents signed by her.* Our client's Authorization to Release Employment and Payroll Records is enclosed herewith.

Notably, *Labor Code § 226(c)* provides in relevant part that: "An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but *no later than 21 calendar days from the date of the request.* A violation of this subdivision is an infraction..."

We look forward to hearing from you about the possibility of mediating this matter. Please contact me if you have any questions or comments regarding the foregoing.

Very truly yours,

KESLUK & SILVERSTEIN, P.C.

  
Brian S. Kesluk, Esq.

BSK/kic  
Enclosures



Exhibit D

1 REX DARRELL BERRY, State Bar No. 110219  
ERICK C. TURNER, State Bar No. 236186  
2 BERRY & BLOCK LLP  
2150 River Plaza Drive, Suite 415  
3 Sacramento, CA 95833  
(916) 564-2000  
4 (916) 564-2024 FAX

5 Attorneys for Defendant  
6 WALGREEN CO.

7  
8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**  
10

11 ANNA MISSOURI, ) Case No. BC462224  
12 Plaintiff, )  
13 v. ) **DEFENDANT WALGREEN CO.'S**  
14 WALGREEN CO., an Illinois corporation, ) **NOTICE TO STATE COURT OF**  
and DOES 1 through 35 inclusive, ) **REMOVAL OF CIVIL ACTION TO**  
15 Defendants. ) **FEDERAL COURT**  
16 ) *Complaint filed: 05/25/11*

17 PLEASE TAKE NOTICE that Defendant Walgreen Co. filed the attached Notice of  
18 Removal in the United States District Court for the Central District of California, effecting  
19 removal of this case from the Los Angeles County Superior Court to the United States District  
20 Court for the Central District of California. (See **Exhibit A.**)

21 PLEASE TAKE FURTHER NOTICE that the Notice of Removal has been filed in  
22 accordance with the provisions of 28 U.S.C. § 1441(b) and 28 U.S.C. § 1332 (diversity  
23 jurisdiction).

24 ///

25 ///

26 ///

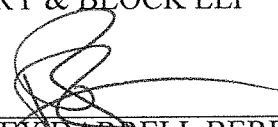
27 ///

28 ///

1 PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. §1446, the filing of the  
2 Notice of Removal effects the removal of the above-styled action to the United States District  
3 Court, and this Court may proceed no further unless and until the case is remanded.

4  
5 DATED: June 28, 2011

BERRY & BLOCK LLP

6  
7 By   
8 REX DARRELL BERRY  
9 ERICK C. TURNER  
10 Attorneys for Defendant  
11 WALGREEN CO.  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 *Missouri v. Walgreens, et al.*  
 2 Los Angeles Superior Court, Case No. BC462224  
 3 U.S.D.C., Central District, Case No. TBD

4 **DECLARATION OF SERVICE**

5 I am a citizen of the United States, over the age of 18 years, and not a party to or  
 6 interested in this action. I am an employee of Berry & Block LLP, and my business address is  
 7 2150 River Plaza Drive, Suite 415, Sacramento, CA 95833. On this day I caused to be served the  
 8 following document(s):

9 **DEFENDANT WALGREEN CO.'S NOTICE TO STATE COURT OF REMOVAL OF  
 10 CIVIL ACTION TO FEDERAL COURT**

11 ☒ by placing ☐ the original ☒ a true copy into sealed envelopes addressed and served as  
 12 follows:

13 **Attorney for Plaintiff**

14 Douglas N. Silverstein  
 15 Michael G. Jacob  
 16 Jasmine A. Duel  
 17 KESLUCK & SILVERSTEIN, P.C.  
 18 9255 Sunset Boulevard, Suite 411  
 19 Los Angeles, CA 90069-3309  
 20 (310) 273-3180; Fax: (310) 273-6137

21 ☒ **BY MAIL:** I am familiar with this firm's practice whereby the mail, after being placed in  
 22 a designated area, is given fully prepaid postage and is then deposited with the U.S. Postal  
 23 Service at Sacramento, California, after the close of the day's business.

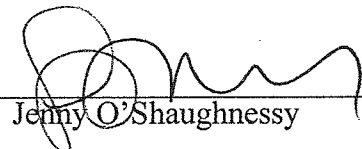
24 ☐ **BY PERSONAL DELIVERY:** I caused such envelope to be delivered by hand.

25 ☐ **BY OVERNIGHT COURIER:** I caused such envelope to be placed for collection and  
 26 delivery in accordance with standard overnight delivery procedures for delivery the next  
 27 business day.

28 ☐ **BY FACSIMILE:** I caused such documents(s) to be transmitted by facsimile  
 transmission from (916) 564-2024 to the person(s) and facsimile transmission without  
 number(s) shown about. The facsimile transmission was reported as complete without  
 error and a transmission report was properly issued by the transmitting facsimile machine.  
 A true and correct copy of the transmission report will be attached to this proof of service  
 after facsimile service is completed.

☐ **BY FEDERAL ELECTRONIC FILING:** I caused such document(s) to be  
 electronically filed with the Clerk of the Court using the CM/ECF system, which will send  
 notification of such filing and copies of the document(s) to the parties.

I declare under penalty of perjury under the laws of the State of California that the  
 foregoing is true and correct. Executed on June 28, 2011, at Sacramento, California.

  
 Jenny O'Shaughnessy

**PROOF OF SERVICE**

Exhibit E

1 REX DARRELL BERRY, State Bar No. 110219  
ERICK C. TURNER, State Bar No. 236186  
2 BERRY & BLOCK LLP  
2150 River Plaza Drive, Suite 415  
3 Sacramento, CA 95833  
(916) 564-2000  
4 (916) 564-2024 FAX

5  
6 Attorneys for Defendant  
WALGREEN CO.

7  
8 **SUPERIOR COURT OF CALIFORNIA**  
9 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

10 ANNA MISSOURI,

11 Plaintiff,

12 v.

13 WALGREEN CO., an Illinois corporation,  
14 and DOES 1 through 35 inclusive,

15 Defendants.

) Case No. BC462224


) **DEFENDANT WALGREEN CO.'S**  
) **NOTICE TO ADVERSE PARTY OF**  
) **REMOVAL OF CIVIL ACTION TO**  
) **FEDERAL COURT**

) *Complaint filed: 05/25/11*

16 PLEASE TAKE NOTICE that on June 29, 2011, Defendant Walgreen Co. filed a Notice  
17 of Removal with the Clerk of the United States District Court for the Central District of  
18 California. A copy of said notice and attachments thereto are attached hereto as **Exhibit A**.

19  
20 DATED: June 28, 2011

BERRY & BLOCK LLP

21  
22 By   
23 REX DARRELL BERRY  
24 ERICK C. TURNER  
25 Attorneys for Defendant  
26 WALGREEN CO.  
27  
28



1 *Missouri v. Walgreens, et al.*  
 2 Los Angeles Superior Court, Case No. BC462224  
 3 U.S.D.C., Central District, Case No. TBD

4 **DECLARATION OF SERVICE**

5 I am a citizen of the United States, over the age of 18 years, and not a party to or  
 6 interested in this action. I am an employee of Berry & Block LLP, and my business address is  
 7 2150 River Plaza Drive, Suite 415, Sacramento, CA 95833. On this day I caused to be served the  
 8 following document(s):

9 **DEFENDANT WALGREEN CO.'S NOTICE TO ADVERSE PARTY OF REMOVAL OF  
 10 CIVIL ACTION TO FEDERAL COURT**

11 ☒ by placing ☐ the original ☒ a true copy into sealed envelopes addressed and served as  
 12 follows:

13 **Attorney for Plaintiff**

14 Douglas N. Silverstein  
 15 Michael G. Jacob  
 16 Jasmine A. Duel  
 17 KESLUCK & SILVERSTEIN, P.C.  
 18 9255 Sunset Boulevard, Suite 411  
 19 Los Angeles, CA 90069-3309  
 20 (310) 273-3180; Fax: (310) 273-6137

21 ☒ **BY MAIL:** I am familiar with this firm's practice whereby the mail, after being placed in  
 22 a designated area, is given fully prepaid postage and is then deposited with the U.S. Postal  
 23 Service at Sacramento, California, after the close of the day's business.

24 ☐ **BY PERSONAL DELIVERY:** I caused such envelope to be delivered by hand.

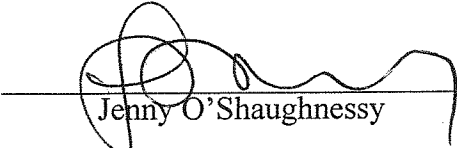
25 ☐ **BY OVERNIGHT COURIER:** I caused such envelope to be placed for collection and  
 26 delivery in accordance with standard overnight delivery procedures for delivery the next  
 27 business day.

28 ☐ **BY FACSIMILE:** I caused such documents(s) to be transmitted by facsimile  
 transmission from (916) 564-2024 to the person(s) and facsimile transmission without  
 number(s) shown about. The facsimile transmission was reported as complete without  
 error and a transmission report was properly issued by the transmitting facsimile machine.  
 A true and correct copy of the transmission report will be attached to this proof of service  
 after facsimile service is completed.

☐ **BY FEDERAL ELECTRONIC FILING:** I caused such document(s) to be  
 electronically filed with the Clerk of the Court using the CM/ECF system, which will send  
 notification of such filing and copies of the document(s) to the parties.

I declare under penalty of perjury under the laws of the State of California that the  
 foregoing is true and correct. Executed on *June 28, 2011*, at Sacramento, California.

30

  
 Jenny O'Shaughnessy

**PROOF OF SERVICE**